

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ANDREW BERNHARDT,

Appellant,

v.

NANCY McCARTHY for BOARD OF PROBATION and PAROLE,

Respondent.

DOCKET NUMBER WD77214

Date: May 12, 2015

Appeal from:
Cole County Circuit Court
The Honorable Patricia S. Joyce, Judge

Appellate Judges:
Division Four, Alok Ahuja, C.J., James E. Welsh, J. and Patrick W. Campbell, Sp. J.

Attorneys:
Gilbert C. Sison, Clayton, MO, Joel J. Schwartz and Hannah Zhao, St. Louis, MO for appellant
Monte C. Platz, Jefferson City, MO for respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

ANDREW BERNHARDT

Appellant,

v.

NANCY McCARTHY for BOARD OF PROBATION and PAROLE,

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WD77214

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Andrew Bernhardt was convicted of aggravated stalking and armed criminal action, based on an incident in which he “purposefully harassed [his victim, an adult male] by appearing in front of his house on two or more occasions while in possession of a firearm . . . and communicated a credible threat by displaying a weapon in front of his home and did so with the intent of placing [Victim] in reasonable fear for his safety or the safety of his family or household.”

Bernhardt was placed on parole. The Board of Probation and Parole ordered Bernhardt to obtain a sex offender evaluation as a special condition of his parole. Bernhardt filed suit in the Circuit Court of Cole County to challenge this parole condition, arguing that it was unlawful because he had never been convicted of a sexual offense. The circuit court granted the State’s Motion for Judgment on the Pleadings, and Bernhardt appeals.

APPEAL DISMISSED.

Division Four holds:

Bernhardt’s appeal is moot, because he submitted to the sex offender evaluation, and was released from the Board’s parole supervision, prior to the filing of his opening brief on appeal.

Although he concedes that the appeal is moot, Bernhardt argues that we should nevertheless decide it, because the issue he raises is a recurring question of general public interest which will otherwise evade review. We disagree. Given that the average parole term in Missouri is 28 months, a parolee will have sufficient time to litigate a challenge to a condition of parole prior to the expiration of the parolee’s parole term, and at least one such challenge has previously been litigated through appeal. The fact that other parties could raise the issues Bernhardt seeks to litigate – in a live controversy – justifies our refusal to invoke the discretionary “capable of repetition” exception to the mootness doctrine in this case.

Before: Division Four, Alok Ahuja, C.J., James E. Welsh, J. and Patrick W. Campbell, Sp. J.

Opinion by: Alok Ahuja, Judge

May 12, 2015

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